Supreme Court, U.S.
FILED

06-917 AUG 22 2006

OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

Marc Edwards,

Petitioner,

v.

United States,

Respondent.

On Petition for a Writ of Certiorari
To the Tenth Circuit Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

Marc Edwards
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Gillette, Wyoming 82718

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QUESTIONS PRESENTED

The Tenth Circuit Court of Appeals affirmed a decision of the United States District Court stating petitioner's appeal was "frivolous". These decisions raise ten substantial federal questions warranting review by this Court:

1. Whether the court of appeals was non-responsive to the petition.
2. May courts adjudicate petitions that present no legal rights and no damage?
3. Must there be a case filed before the district court may have/ acquire jurisdiction?
4. Must a plaintiff have standing to complain before the district court may proceed?
5. Does this apply to all plaintiffs?
6. Is the issue of standing considered frivolous?
7. Was the district court required to strike the witness's legal opinions?
8. Is the sufficiency of a witness's testimony a frivolous issue?
9. Is a respondent in a summons enforcement hearing entitled to an effective cross-examination of the witnesses against him?
10. Was Edwards denied an effective cross-examination?
11. If the appeal is not frivolous, then the sanctions should be vacated?

PARTIES TO THE PROCEEDING

Marc Edwards is the petitioner. The United States is the respondent.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Marc Edwards, petition this Court for a writ of certiorari to review the decision of the United States Court of Appeals for the Tenth Circuit. The panel's decision is non-responsive and is in plain contravention of the facts, current law and holdings of this Court. The Tenth Circuit panel essentially denied review and it end was to plainly deny Edwards due process and a fair trial. This Court has held: "It is a necessary and well-settled rule that the exercise of jurisdiction by this court to protect constitutional rights cannot be declined when it is plain that the fair result of a decision is to deny the rights..." *Smithsonian Institution v. St. John*, 214 U.S. 19, 28 (1909). Because these flagrant violations of well-established basic principals and constitutional provisions is nation-wide, review is warranted by this Court to stop the lawless actions of the inferior courts.

OPINIONS BELOW

The opinion of the Tenth Circuit panel is unreported

JURISDICTION

The order denying rehearing was entered on May 30th 2006. The jurisdiction of this Court rests upon 28 USC § 1254(a).

As shown below, substantial federal questions were raised in both the district court and the court of appeals and neither court addressed them: "We are aware that a right or immunity set up or claimed under the Constitution or laws of the United States may be denied as well by evading a direct decision thereon as by positive action. If a federal question is fairly presented by the record, and its decision is actually necessary to the determination of the case, a judgment which rejects the claim, but avoids all reference to it, is as much against the right...as if it had been specifically referred to and the right directly refused." *Chapman v. Goodnow's Admin'r.*, 123 US 540, 548 (1887).

This Court has also held: "It is a necessary and well-settled rule that the exercise of jurisdiction by this court to protect consti-

tutional rights cannot be declined when it is plain that the fair result of a decision is to deny the rights..." *Smithsonian Institution v. St. John*, 214 U.S. 19, 28 (1909).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article III § 2 of the United States Constitution mandates: "The judicial power shall extend to all cases, in law and equity, arising under this Constitution..." The Fifth Amendment to the United States Constitution provides that "No person shall...be deprived of life, liberty, or property, without due process of law..."

STATEMENT OF THE CASE

Bruce Gilbert, an agent with the Internal Revenue Service (IRS) issued a summons requesting books, records and testimony of petitioner Edwards. Edwards appeared several times with a court reporter and asked Mr. Gilbert questions regarding the factual basis of his claims. Mr. Gilbert was unable to answer most questions responsively, including not being able to prove Edwards is a "taxpayer". "But the maxim applies, quod non apparet non est. The fact not appearing is presumed not to exist." *Shepard v The Schooner Clara*, 102 US 200, 202.

Edwards has maintained there are no facts to support any of the claims against him, i.e., he is a taxpayer and an obligation was created to file a tax return.

I. UNDERLYING LITIGATION.

A petition was filed on behalf of the "United States" to enforce Mr. Gilbert's summons; attached was an affidavit of good faith signed by Mr. Gilbert.

Edwards filed two motions, a motion for a more definite statement and a motion to dismiss for a lack of standing. The motion for a more definite statement raised the issue that although a "civil" action was filed, no where in the contents of the petition was there a distinction whether the "civil" action was in the nature

of a contact dispute or a tort.

The motion to dismiss for a lack of standing was based on the fact the petition did not present a case within the meaning of article III § 2 of the constitution. The petition lacked any allegation of the violation of a legal right and the resulting damage.

At the hearing, the district court judge refused to discuss the motions stating both lacked merit. Mr. Gilbert was put on the stand and was questioned by his attorney and the judge. Edwards objected to the witness giving legal opinions. The district court judge ruled the witness may not give legal opinions.

However, the four questions the judge asked from United States v. Powell, 379 US 48 (1964), required the witness to give legal opinions i.e., "Was the summons issued for a legitimate purpose under the law?" Edwards objected and the objection was denied.

A. The district court decision. The district court ruled in favor of the IRS/United States and ordered Edwards to appear in court to provide books, records and testimony to the IRS. This ruling denied Edwards due process and a fair hearing.

1. Plaintiff must have standing. Article III § 2 mandates: "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States..." A case consists of two elements, the violation of a legal right and the damage therefrom. This Court, recently held this: "we have explained that prudential standing encompasses "the general prohibition on a litigant's raising another person's legal rights..." Elk Grove Unified School District et al. v. Newdow et al., No. 02-1624, decided June 14, 2004. This Court has also held "courts only adjudicate justiciable controversies." United States v. Interstate Commerce Commission, 337 US 426, 430 and,

"The prime object of all litigation is to establish a right asserted by the plaintiff...the action should be brought in the name of the party whose legal right has been affected, against the party who committed or caused the injury...the duty of this court, as of every judicial tribunal, is limited to determining rights of persons or of property,

which are actually controverted in the particular case before it." Tyler v. Judges of the Court of Registration, 21 SCt. 206, 207, 208 (emphasis mine).

To have standing to complain a plaintiff must allege the violation of his legal right an injury. The IRS petition did not raise any legal rights and no injury. The IRS/United States lacked standing and the petition should have been dismissed.

There are no exceptions to the standing requirement in Article III § 2 of the constitution. Every plaintiff, to have standing in the courts must allege the violation of a legal right (held by the plaintiff) and injury.

2. District court judge required to strike witness's legal opinions. The district court judge ruled the witness may not give legal opinions. He then asked the witness four questions that required a legal opinion and then overruled Edwards' objection to strike the legal opinions.

One example is: "Was the summons issued for a legitimate purpose under the law?" Any answer to this question is a legal opinion. The district court judge should have stricken the answers. Notwithstanding the lack of a case (standing), without the testimony the IRS could not have prevailed.

3. Edwards was denied cross-examination. Edwards, a non-lawyer was not permitted to ask questions regarding the witness's opinions, both from the affidavit of good faith and testimony on direct examination.

Edwards asked questions regarding the alleged obligation to file a return and keep books and records. Edwards asked one question, "Would there be an obligation if there was no Constitution." The purpose was to not only show the relevance of the constitution to any alleged obligation, but to examine how and why the agent determined an obligation was created. There was an objection on grounds the question was ridiculous; the judge sustained the objection and refused to permit any further questions regarding how and why the witness came to the opinion Edwards was a taxpayer and an obligation was created to file a tax return.

The fifth amendment requires an effective cross-examination and:

"a denial of cross-examination without waiver . . . would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it." Smith v. Illinois, 390 U.S. 129, 131 (1968) (emphasis added).

When the IRS's case is based on the opinions of a witness who has submitted both an affidavit and oral testimony, then an effective cross-examination requires asking questions regarding how and why the witness came to those conclusions and opinions.

II. PROCEEDINGS IN THE TENTH CIRCUIT COURT.

Edwards appealed with basically two issues, the issue of standing and cross-examination. The IRS/United States filed a 26 page brief filed by five lawyers and raised essentially a one-word argument: "frivolous" and sought sanctions. Edwards filed a motion to strike on the grounds that a frivolous appeal required no response. The five IRS/United States lawyers agreed in their letter to the clerk that frivolous filings require no response.

The Court of Appeals, without first ruling on the motion to strike, affirmed the district court decision and sanctioned Edwards six thousand dollars.

A motion for rehearing on the grounds the motion to strike should have been ruled on first, opportunity to respond to the brief permitted, and that the panel was non-responsive to each issue raised, was denied.

A. FEDERAL ISSUES RAISED BELOW AND NOT RULED ON. In each proceeding the foregoing federal issues were raised and each court was non-responsive.

REASONS FOR GRANTING PETITION.

There are few reasons more important than those presented by this case. The public perception of the judicial system is damaged when judges flagrantly violate long held principals, constitu-

tional provisions, rules of procedure and the holdings of this Court. Despite knowing the law, and having it presented over and over again in pleading he district court and the Tenth Circuit panel knowingly, and d rately refused to comply with Article III § 2 of the constitution, the due process clause and the holdings of this Court.

I. REVIEW IS WARRANTED. Confidence in the system is eroded. Review is warranted because both courts disregarded the holdings of this Court. Confidence in the system is lost when judges themselves refuse to comply with the rules. As shown below, unless this Court exercises its inherent supervisory jurisdiction, the lower courts will continue their lawless rule.

II. REVIEW IS WARRANTED. Nation-wide abuse. The refusal to comply with the rules is not limited to this case; it is institutional and nation-wide. The IRS never alleges the violation of a legal right and damage in their petitions to enforce and judges routinely grant the relief despite a clear lack of standing.

A. Due process is an empty political phrase. This Court is obligated to not permit trial courts to continue ignoring Article III § two's mandates regarding jurisdiction and standing. If there is abuse of "precious judicial resources" and dockets filled with cases, how much of that burden is the IRS directly responsible for? How many cases currently choking the federal dockets should have been dismissed before pleadings were closed?

The elements of a case and standing are very simple; a plaintiff must allege the violation of their legal rights and injury. Without these two, courts may not proceed. This is true even in tax cases.

CONCLUSION

For the foregoing reasons this Court should grant the petition for a writ of certiorari.

Submitted this 22 day of August, 2006.

Marc Edwards

Marc Edwards

December 13, 2006

APPENDIX

FILED
U.S DISTRICT COURT
DISTRICT OF WYOMING
AUG 26 2005
Stephan Harris, Clerk Casper

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff(s),	)	
	)	
vs.	)	Case No. 05CV141-D
	)	
Marc Edwards,	)	
	)	
Defendant(s).	)	

ORDER ENFORCING INTERNAL REVENUE SERVICE SUMMONS

This matter comes before the Court on the United States of America's Petition to Enforce Internal Revenue Service Summons. The Court, having considered the Petition to Enforce Internal Revenue Service Summons and the testimony of Internal Revenue Service Agent Bruce Gilbert, FINDS and ORDERS as follows:

The Court hereby incorporates by reference its oral ruling issued in open court on August 26, 2005, the transcript of which is appended to this Order. THEREFORE, it is hereby ORDERED that the United States of America's Petition to Enforce Internal Revenue Service Summons is GRANTED. The Respondent's pending motions are DENIED.

It is hereby further ORDERED that Respondent appear on September 7, 2005 at 9:30 a.m. in Courtroom #2 of the Ewing T. Kerr Federal Courthouse, 111 South Wolcott, Casper, Wyoming, 82601, to testify as specified in the summons issued to respondent by

Internal Revenue Service Agent Bruce Gilbert on January 21, 2005. Respondent is also ORDERED to produce for examination at that time any book, records, and other documents requested in the Internal Revenue summons issued by Internal Revenue Service Agent Bruce Gilbert on January 21, 2005.

This order is a final appealable order and the Respondent has 60 days from the entry of this order to appeal. United States v. Chai, 3 Fed. Appx. 941, *2 (10th Cir. 2001) (unpublished) (citing Church of Scientology of Cal. v. Unith States, 506 U.S. 9, 18 n.11 (1992)). The court was erroneous in its earlier pronouncement that the order would not be final and appealable. If respondent has not properly filed a notice of appeal by September 7, 2005 at 9:30 a.m. with the clerk of the Court of the United States District Court for the District of Wyoming, and he fails to appear, testify, and produce the documents requested by Internal Revenue Service Agent Bruce Gilbert in the summons, he will be held in civil contempt and a warrant will be issued for his arrest.

DATED this 26th day of August, 2005.

_____

United States District Judge

FILED
UNITED STATES COURT OF APPEALS
TENTH CIRCUIT
UNITED STATES COURT OF APPEALS
MARCH 27, 2006
TENTH CIRCUIT
Elizabeth A. Shumaker
Clerk of the Court

UNITED STATES OF AMERICA

Plaintiff-Appellee,

v. No. 05-8085

Marc Edwards, (DC No. 05CV141-D

Defendant-Appellant

ORDER AND JUDGMENT*

Before HENRY, BRISCOE, and O'BRIEN, Circuit Judges

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed.R.App.P. 34(a)(2) 10th Cir,R, 34.1(G). The case is, therefore, submitted without oral argument.

Defendant Marc L. Edwards, appearing pro se, appeals an order of the district court enforcing on Internal Revenue Service (IRS) summons pursuant to 26 USC §§

*This order and judgment is not binding precedent, except under the doctrine of the law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation or orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3

7602 and 7604. We affirm the district court's order and grant the government's motion for sanctions against Edwards for maintaining a frivolous appeal.

I.

Edwards, a resident of Gillette, Wyoming, is the subject of an IRS investigation into his federal income tax liabilities for the years 200 through 2003. On January 21, 2005, IRS agent Bruce Gilbert, in connection with the investigation, served Edwards with a summons directing him to appear before Gilbert on February 4, 2005, to testify and to produce for examination certain books, records, papers and other data. Edwards appeared but failed to provide any of the information requested in the summons. Gilbert apparently met with Edwards two additional times, but Edwards continued to refuse to provide the requested information.

On May 11, 2005, the United States filed a petition in federal district court to enforce the summons. ROA, Vol. 1, Doc. 1. Attached to the petition was a declaration from Gilbert. The declaration stated, in pertinent part, that "[a]ll administrative steps required bythe Internal Revenue Code for the issuance of a summons ha[d] been taken." and that "no Justice Department referral [was] in effect per Internal Revenue Code § 7602(d)(2)" at the time. Id. Decl. at 2. On June 3, 2005, the district court issued a show cause order directing Edwards to appear before the court "to show cause why [he] should not be compelled to obey the...summons..." Id. Doc 2 at 1-2.

Prior to the show cause hearing, Edwards filed a host of pro se motions, included was (1) a motion to strike the petition for a failure to "present a cause of action" and for lack of standing on the part of the government, id., Doc. 4 at 1, (2) a motion for more definite statement because Edwards was allegedly confused about whether the petition "[wa]s alleging a contract dispute or a tort." id., Doc. 5 at 1, (3) a motion to strike Gilbert's declaration on the grounds that Gilbert was "not qualified to testify against" Edwards (because, in part, at the February 4, 2005, meeting Gilbert court not tell Edwards "the difference between Wyoming and the State of Wyoming"), id., Doc. 6 at 1, and (4) a motion to strike arguing that is was not clear whether the "United States of America" or simply the "United States" was "bringing the action." Id., Doc. 13 at 1.

The district court conducted a show cause hearing on August 26, 2005, at the conclusion of which it denied Edwards' motions and granted the government's petition. Edwards filed a notice of appeal on September 2, 2005.

II.

Edwards contends the district court erred in granting the government's petition. We review for clear error the "district court's determination of whether the factuall conditions for enforcement of [the] summons [were] met...." United States v. Ins. Consultants of Knox, Inc, 187 F.3d 755, 759 (7th Cir. 1999).

Section 7602 of the Internal Revenue Code authorizes the IRS to issue summones for various purposes, including "determining the liability of any person for any internal revenue tax...." 26 USC § 7602(a). In turn, § 7604 of the Internal Revenue Code authorizes district courts to compel compliance with IRS summons. More specifically, § 7604(a) affords jurisdiction to the "United States district court for the district in which" the person summoned "resides or is found" to compel the person's "attendance, testimony, or production of books, papers, records, or other data." Further, § 7604(b) provides that "[w]henever any person summoned...neglects or refuses to obey such summons," the government may seek enforcement of the summons from the federal district court having jurisdiction over the matter.

In United States v. Powell, 379 US 48 (1964), the Supreme Court outlined four requirements that must be established by the government in order to obtain enforcement of a summons. These include: "(1) the investigation is being conducted for a legitimate purpose; (2) the information sought is relevant to the investigation and (3) not already in the government's possession; and (4) the administrative steps required by the Internal Revenue Code have been followed." Ins. Consultants of knox, 187 F.3d at 759 (citing POwell, 379 US at 57-58.). "The Powell requirements impose only a 'minimal burden' on the agency," and "can usually be satisfied by an affidavit stating that the government has met them," Id. (citations omitted). "Once the government meets this prima facie burden, the taxpayer faces a heavy burden to either present facts to disprove one of the Powell factors, or to show that the IRS issued the summons in bad faith." Id (internal quotation marks omitted).

"The taxpayer can rebut the government's prima facie case only by alleging specific facts in rebuttal." Id (internal quotation marks omitted).

Here, the district court found, based upon Gilbert's testimony, that all four of the Powell requirements had been satisified. The district court further found that Edwards had not met his burden of presenting facts to disprove any of the Powell factors, and, in fact, "ha[d] not even attempted" to do so. ROA, Vol. 2 at 6. After reviewing the record on appeal, we conclude there was no clear error on the part of the district court in making these findings. Indeed, Edwards' appellate brief makes no mention of any of the Powell factors, and instead focuses in the arguments asserted in the pre-hearing motions he filed with the district court. Like the district court, we reject those arguments as patently frivolous. We also reject as frivolous Edwards' assertion that the district court denied him the opportunity to "attack the credibility and competency"of Gilbert during the show cause hearing.1

Finallly, the government has filed a motion asking us to sanction Edwards for maintaining a frivolous appeal by ordering him, pursuant to 28 USC § 1912 and Rule 38 of the Federal Rules of Appellate Procedure, to pay the government $6000. In support of its motion, the government has presented evidence that, "[a]ccording to the records of the Tax Division of the Department of Justice, the average expense in attorney salaries and other costs incurred by [the government] in the defense of frivolous appeals in which sanctions were ordered during 20001 and 2002 (the latest period for which figures are available) was approximately $6,900". Mot. at 7. The government argues that, although the requested award of $6000 "might not cover all the costs attending this litigation, it would nevertheless at least partially compensate the Government for the direct costs of defending the appeal and might deter future frivolous appeals. Id at 7-8.

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1. In support of this argument, Edwards argues only that the district court erred in refusing to permit Gilbert to answer the following question posed by Edwards: "Would there be an obligation [to pay federal taxes] if there was no constitution?" Aplt. Br. at 8.

In response, Edwards has filed a motion to strike the government's motion arguing at the length of the government's appelalte brief (twenty six pages) and the fact that several attorneys ahve appeared on behalf of the government demonstrate that his appeal is not frivolous.

We agree with the government that Edwards' appeal is frivolous. As discussed above, the results of both the government's petition and this appeal were "obvious," and Edwards' arguments on appeal were "wholly without merit." Braley v. Campbell, 832 F.2d 1504, 1510 (10th Cir. 1987) (discussing when an appeal is frivolous). Accordingly, we award $6000 to the government under Rule 38 as damages. See Stafford v. United States, 203 F.3d 1177 (10th Cir. 2000) (awarding similar lump sum sanction in lieu of actual costs); Parker v. Commissioner, 117 F.3d 785, 787 (5th Cir. 1997) (approving the practive of imposing a lump sum samction because it "saves the government the additional cost of calculating its expenses, and also saves the court the time and expense of reviewing the submission of costs").

The order of the district court enforcing the summons is AFFIRMED. The government's motion for sanctions is GRANTED in the amount of $6000. Edwards' motions to strike re DENIED. Edwards motion to admit evidence is denied.

Enterd for the Court

Mary Beck Briscoe
Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA

Plaintiff- Appellee,

V. NO. 05-8085

Marc L. Edwards

Defendant-Appellant.

ORDER
Filed May 30, 2006

Before HENRY, BRISCOE and O'BRIEN, Circuit Judges

Appellant's petition for a rehearing is denied.

The petition for rehearing en banc was transmitted to all the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, thar petition is also denied.

Entered for the Court
ELIZABETH A. SHUMAKER, Clerk

by:
Deputy Clerk